

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE,	:	
INC., ATX, ATX II AND WILDERNESS	:	Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY	:	MDL No. 1373
LITIGATION	:	(centralized before the
	:	Honorable Sarah Evans Barker)
	:	
THIS DOCUMENT RELATES TO	:	
THE MASTER COMPLAINT	:	

**FORD MOTOR COMPANY’S OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL
PRODUCTION OF DOCUMENTS BY DEFENDANT FORD MOTOR COMPANY**

Defendant Ford Motor Company (“Ford”) respectfully submits this opposition to plaintiffs’ motion to compel additional responses to their document requests.

BACKGROUND

This dispute arises out of plaintiffs’ claim that Ford has failed to comply with the Court’s March 15, 2001 Order Regarding Document Production (“Order”) with respect to 32 of the 485 requests in plaintiffs’ First Request for Production. *See* Letter from S. Klok to T. Quinlan and S. Harburg, dated June 18, 2001 (attached as Exhibit A to Plaintiffs’ Statement Concerning Attempts to Resolve Motion to Compel). That Order required Ford to do one of two things in responding to plaintiffs’ requests: either (a) respond to each document request with a list of all responsive documents, identified by Bates number; *or* (b) provide plaintiffs with a readily-printable and word-searchable index of each document contained in its electronic document

depository, identifying eight fields. (*See* Order ¶ 1.) The Court granted Ford 60 days to file its responses to plaintiffs' First Request for Production.¹

Ford filed timely responses to all 485 document requests on April 30, 2001.² In accordance with the Court's order, Ford indicated that it had, among other things, conducted a full-text search of the documents on its electronic database to identify responsive documents by Bates numbers. However, rather than simply providing plaintiffs with lists of thousands of Bates numbers, Ford went beyond the requirements in the Court's Order and created separate drop down menus on Ford's electronic database that identified the documents responsive to each request.³ Using these menus, plaintiffs can conduct searches within each group of responsive documents, thus allowing for further refinement of their requests.

Moreover, as plaintiffs neglect to inform the Court, Ford has *also* provided a method of performing a search on most of the fields identified in the Order – so that plaintiffs can perform their own searches.⁴ Because Ford has complied with the requirements of the

¹ Plaintiffs have continued to serve Ford with additional document requests. On May 9, plaintiffs served Ford with 23 additional document requests. In addition, on February 20, plaintiffs served document requests regarding *forum non conveniens* issues. And on March 14 and April 20, plaintiffs served document requests relating to class certification issues.

² Ford's responses are over 600 pages in length. Ford would be happy to submit a copy of its responses to the Court, should the Court so desire.

³ Plaintiffs have noted that in some cases, the number of documents identified on the drop down menus does not correspond to the number of documents contained on CD-ROMs provided by Ford to plaintiffs. This was brought to the attention of Ford's vendors and should be corrected by the close of business on Friday, July 6, 2001. The problem was caused by a translation error in loading the information onto the website.

⁴ This system of coding includes the author(s) of the document; recipients(s) of the document; the date the document was created; the individual(s) in whose file the document was kept; the file from which the document was product; and the department in which the document was kept in the ordinary course of business. The index does not include a general description of the document (e.g. "e-mail correspondence"; "test data"). Nor does it include the category or categories into which each document belongs. As to the latter, plaintiffs have never provided Ford with a list of specific categories of documents that would aid them in reviewing and organizing documents. However, given that Ford has already provided the Bates numbers of documents responsive to each request, the information contained in the index will allow plaintiffs to conduct their own searches of the electronic database.

Court's Order, and gone *beyond* those requirements, plaintiffs' motion to compel Ford to comply with that order must be denied.

ARGUMENT

Despite the fact that Ford has gone beyond the requirements of the Court's Order, plaintiffs complain that out of 485 responses to their document requests, 32 of Ford's responses identify too many documents. Plaintiffs accuse Ford of "flooding" them with documents not responsive to these specific requests. (Pl. Mem. at 3.) Plaintiffs' criticism of Ford's responses is unjustified, for at least three reasons. *First*, and foremost, as Ford stated in its objections to plaintiffs' document requests and definitions, many of those requests are impossibly overly broad, vague and ambiguous. If Ford's responses appear overly inclusive, it is because plaintiffs' requests are so ill conceived and poorly drafted. *Second*, contrary to plaintiffs' suggestion, Ford has used its "insider" knowledge to fashion its responses to their requests as well as determining where in the company of over 300,000 people the responsive materials are likely to be found. *Third*, if Ford were to employ the search methods they suggest, the responses that Ford would provide would likely be no more accurate – and infinitely more time consuming to complete – than Ford's current responses.

I. FORD HAS MADE A GOOD FAITH EFFORT TO RESPOND TO PLAINTIFFS' OVERLY BROAD, VAGUE AND AMBIGUOUS REQUESTS

Any complaints plaintiffs have with Ford's responses to their document requests are the direct result of the fact that most of plaintiffs' requests are impossibly broad, vague and ambiguous. For example, RFP 42 asks Ford to produce:

Copies of any and all Bridgestone/Firestone, Inc. and FMC, or their subsidiaries Management directives, white papers, test papers, test request, engineering letter, buck slips, product letters, costs studies, design reviews, executive summaries and program

assumptions for the model years 1991-2000 *with regard to* the subject or *similar vehicle* which *relate* or *allude* to the *tire or tires, suspension, steering, frame and chassis*, including but not limited to reports, memorandums, correspondence and other documents by or through any internal committee or group. (Emphasis added.)

Ford objected to this request on the grounds, *inter alia*, that it was vague, ambiguous and overly broad. For example, plaintiffs' request does not define "similar vehicles." Do they mean other Ford SUVs, Ford trucks, non-Ford vehicles, or something else? In addition, the vehicle systems that plaintiffs refer to in their request – suspension, steering, frame and chassis – consist of hundreds of components parts. Are plaintiffs seeking documents that "allude or relate" each of these component parts? Plaintiffs do not define what they mean by "alludes to." They provide a definition for "relating to," which raises even more ambiguity: "relating to . . . means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, or dealing with, or in any way pertaining to." (See Plaintiffs [sic] First Request for Production to Defendant Ford Motor Company, Feb. 29, 2001 ("RFP") at 7.) In turn, plaintiffs define "pertaining to" to mean "relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, reflects, refutes, disputes, rebuts, controverts, or contradicts." (RFP at 7). There are no clear definitions of "concerns," "corroborates," "shows," "reflects" or "refutes."

Plaintiffs would require Ford to guess at their intended meaning at Ford's own risk. Because Ford has interpreted these phrases broadly as defined in plaintiffs' requests, it is accused of "dumping" material. However, if Ford construed the meaning of the phrase "relates or alludes" too narrowly, Plaintiffs would accuse Ford of hiding material. By formulating

requests that are so broad and ill conceived, plaintiffs are attempting to engage in an elaborate game of “gotcha.”

Other requests contain assumptions that make a response difficult or impossible.

For example, RFP 247 – which plaintiffs make the focus of their motion – asks Ford to produce:

All correspondence, memoranda, reports, electronic data or communications **regarding** all incidents of tread and/or belt separation in Firestone ATX/ATXII/Wilderness and/or **similar tires** manufacture [sic] from the **same skim stock** reported in the U.S., Canada and Mexico during the time period from 1990 through the present date. (Emphasis added)

Plaintiffs nowhere define what they mean by the “same skim stock,” and because Ford did not manufacture the Firestone tires at issue, it is not in a position to identify which “tires” might have been made from the “same skim stock.” Thus, no amount of review, whether manual or by computer, would allow Ford to identify documents responsive to this request. Moreover, the request is not limited to Firestone ATX/ATXII and Wilderness tires – it includes “similar tires,” which is also undefined. Do plaintiffs mean to include only “similar” Firestone tires, or tires of other manufacturers? Once again, Ford is not in a position to determine what tires plaintiffs consider “similar” for Firestone ATX, ATXII and Wilderness tires.

Virtually all of the 32 document requests at issue suffer from similar defects. *See, e.g., Contracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 666 (D. Kan. 1999) (finding document request overly broad where “respondent is left to guess what documents are responsive”); *Gray v. Faulkner*, 148 F.R.D. 220, (N.D. Ind. 1992) (denying motion to compel response to document request vaguely referencing “other incidents”); *Amcast Indus. Corp. v. Detrex Corp.*, 138 F.R.D. 115, 121 (N.D. Ind. 1991) (denying motion to compel where document requests were overly broad). If Ford's responses might at times seem overly

inclusive, the fault lies with plaintiffs for drafting overly broad, vague and ambiguous requests in support of claims which themselves are incredibly broad.

II. FORD’S RESPONSES ARE BASED ON FORD’S SPECIALIZED KNOWLEDGE OF THE DOCUMENTS AT ISSUE

Plaintiffs suggest that Ford has not individually reviewed the documents that it has identified in its responses, and that Ford’s responses do not reflect “the human judgment essential to complying” with this Court’s Order. (Pl. Mem. at 5.) This is inaccurate. In assembling its electronic database, Ford reviews and codes each document as it is added to the electronic database. In the process, Ford has gathered specialized knowledge about the subject matter of documents, the information they contain, and how documents relating to specific issues can be located. Using this “insider” knowledge, Ford crafted searches of the electronic database to identify documents responsive to plaintiffs’ requests (to the degree it was able to do so, given the breadth and vagueness of those requests).

For example, RFP 292 seeks:

Records and documents *reflecting* whether *other tires manufactured by Firestone* have experienced the *same type of tire separations as the Firestone ATX/ATXII/Wilderness tires*, including documents identifying those tires that have experienced tire separations by model, size, manufacturing plant, and geographic location of incidents.

Even though the request contains vague and undefined terms, such as “same type of tire separations,” Ford made a good faith effort to respond to this request. Among other things, in the course of reviewing the millions of pages of documents that it has included on its electronic database over many months, Ford has identified numerous terms that might “reflect” tire tread separations, including the following:

“Adhesion strength”

Ageing
Aging
Air pressure
“Ambient temperature”
“Ambient/operation temperature”
Apart
Bead
“Belt separation”
(Came NEAR5 off)
“Cohesive failure”
(Come NEAR5 off)
Crack
“Crack propagation”
Cracked
Cracking
De-tread
Debead
Decatur
Degradation
Degrade
Degrading
Delaminate
Delamination
Delaminating
Delaminated
Detread
“Fatigue life”
“High load”
“High mile”
“High mileage”
“High speed”
“High stress”
Inflate
Inflation
“Low pressure”
“Operating temperature”
“Over inflated”
Oxidation
Peel
“Peel force”
“Peel strength”
“Per square inch”
Pressure
p.s.i.
psi

“Rates of strain”
Recall
Repair
“Root cause”
Sep
Separate
Separated
Separate
Separated
Tear
“Tear resistance”
“Tire room”
“Top belt separation”
“Tread stemming”
“Tread separation”
“Under inflated”
Under-inflated
Underinflated
“Under inflation”
Under-inflation
Underinflation

In searching for documents responsive to RFP 292, Ford combined these search terms with other search terms. For example, even though plaintiffs do not identify with specificity the “other tires manufactured by Firestone” referenced in their request, using the knowledge of potentially relevant terms and sources of responsive documents gathered during months of reviewing documents included on its electronic database, and making a good faith effort to interpret plaintiffs’ request, Ford has assembled search terms to identify documents “reflecting” such other tires:

14"
“14 inch”
14-inch
15"
“15 inch”
15-inch
16"
“16 inch”
16-inch

17"
"17 inch"
17-inch
"23 Degree"
23-Degree
27X8.50R14LT
30X9.50-15LT
30X9.50R15LT
31X10.50R15LT
31X10.50R16.5LT
32X11.50R15LT
32X12.50R15LT
33X12.50R15LT
33X12.50R16.5LT
195/75R14
205/75R15
215/65R16
215/70R15
215/75R15
215/75R15LT
215/75R15LTP
225/60R16
225/70R14
225/70R15
225/75R15
225/75R16LT
235/75R15
235/75R15LT
235/75R15LTP
235/70R16
237/70R16
245/75R16
255/70R16
255/85R16LT
265/75R15
265/70R16
265/70R17
265/75R15
265/75R16LT
275/75R16
"Ameri way"
"American Prospector"
AT
A/T
ATX

“ATX spare”
Baja
BF
BFI
Bridgestone
BSFS
Carcass
Cauchos
Daytona
“Daytona Radial”
Firehawk
Firestone
“Force 4”
Force-4
“Force Four”
Force-Four
Gillette
“Gillette Force 4”
Lemans
“Lemans Radial”
LT215
LT225
LT235
LT245
LT265
LT305
LT215/85R16
LT215/85B16
LT215/85D16
LT225/75R16
LT225/75B16
LT225/75D16
LT235/75R15
LT235/75B15
LT235/75D15
LT235/85R16
LT235/85B16
LT235/85D16
LT245/75R16
LT245/75B16
LT245/75D16
LT265/75R16
LT265/75B16
LT265/75D16
LT305/70R16

LT305/70B16
LT305/70D16
P205
P215
P225
P235
P245
P255
P265
P195/75R14
P205/75R15
P215/65R16
P215/70R15
P215/75R15
P215/75R15LT
P215/75R15LTP
P225/60R16
P225/70R14
P225/70R15
P225/75R15
P225/75R16LT
P235/75R15LT
P235/75R15LTP
P235/70R16
P235/75R15
P237/70R16
P245/75R16
P255/70R16
P255/85R16LT
P265/70R16
P265/70R17
P265/75R15
P265/75R15
P265/75R16LT
P275/75R16
Peerless
“Peerless Force 4”
Platinum
“Platinum A/T”
Prospector
R4S
Radial
“Radial ATX”
“Radial ATX 23 Degree”
“Radial ply”

Seiberling
“Seiberling Trail Rider”
“Seiberling Trailrider”
“Special purpose”
Speed-rated
“Speed rated”
ST369J
ST381J
“Steel belt”
Steel-belt
Steelbelt
Steeltex
“Steeltex Radial”
Tiger
“Tiger Paw”
Tire
“Trail rider”
Trailrider
Tread
“Triumph Terrain”
Tyre
Widetrack
“Widetrack Radial Baja”
“Widetrack Radial Baja Lug”
Wilderness
“Wilderness AT”
“Wilderness HT”
“Wilderness LE”
Wrangler

By combining comprehensive search terms such as these, Ford identified to the best of its ability documents responsive to RFP 292 and the other disputed document requests. Far from eliminating human judgment or actual knowledge of the documents in providing its requests, Ford has relied on that knowledge and judgment in responding to plaintiffs’ unwieldy requests.

III. PLAINTIFFS' SUGGESTION THAT FORD MANUALLY REVIEW EACH RESPONSIVE DOCUMENT WOULD LIKELY RESULT IN LESS ACCURATE, RATHER THAN MORE ACCURATE, RESPONSES

Plaintiffs argue that even though Ford has identified responsive documents and provided Bates numbers and drop down menus for those documents, it should go back and re-review each of the millions of pages of documents in its electronic database with regard to each document request to make sure that the lists of responsive documents Ford has assembled are neither under inclusive nor over inclusive.⁵

To begin with, any such effort would be unbelievably time-consuming. Plaintiffs are not simply suggesting that Ford review each of the millions of pages of documents on its electronic database (something that Ford has already done in assembling the database). Rather, they are proposing that Ford be ordered to re-review each of the millions of pages of documents 485 times, to ensure that each of its responses includes all of the documents – and only those documents – responsive to each request. Even if plaintiffs' requests were clear enough to allow for such precise responses, Ford would need to hire and train dozens or hundreds of personnel to undertake this review, which would necessarily take many months or years to complete. Each of those reviewers would have to make personal judgment calls about documents that arguably might or might not fall within the scope of plaintiffs' broad requests. Moreover, each time plaintiffs served a new document request, the entire process would have to be repeated.

Plaintiffs have set July 13, 2001, as the deadline by which this entire manual re-review of the 3 million pages of materials should be completed. Plaintiffs and Ford's counsel have been involved in several meet and confer discussions and have agreed on two dates for the

⁵ It is by no means clear that the documents Ford has identified as a result of its detailed computer searches contain a large number of unresponsive documents. Plaintiffs have identified only 5 documents that they claim are unresponsive to one request – RFP 247.

production of certain items plaintiffs seek; the majority of the items to be produced on July 16, 2001. Plaintiffs have never mentioned the July 13th date for any production. Their suggestion that Ford be compelled to provide further responses by July 13th is an apparent example of their bad faith. Assuming that an individual lawyer took 1 hour to review each of the approximately 800,000 documents on the electronic databases (which total over 3 million pages) for allocation into the 485 responsive categories, it would take $800,000 \times 1 \text{ hour} = 800,000 \text{ hours}$. Assuming this Honorable Court entered an order at the July 9, 2001 hearing requiring the re-review by July 13, 2001, this would allow four days to complete this process. Given 800,000 attorney hours required and the number of days in which to complete the project, Ford would have to hire, train and logistically enable approximately 33,000 lawyers (roughly equivalent to the entire membership of the Michigan State Bar) to conduct the review working 24 hours each day. This assumes there is no quality control, that all attorneys could be trained sufficiently well to allow them to memorize the 485 categories so that they would have to review the documents only once, and that Ford was able to develop a method of communicating these findings to plaintiffs instantly. In the end, it may be that the review produced results no different than the current production and all of the machinations would be for naught.

More to the point, any attempt to re-review the millions of pages of documents to locate those responsive to plaintiffs' requests is likely to be *less* rather than more accurate than the method Ford has used. For example, as shown above, Ford has had to include an enormous number of terms in its searches in order to address the breadth just one of plaintiffs' requests. The instruction book encompassing all 485 of plaintiffs' initial requests that would have to be mastered by each reviewer in order to undertake the type of review contemplated by plaintiffs would be staggering in its complexity. Given this, Ford's use of computer searches of its coded

database is far more likely to capture responsive documents than any manual search Ford could conduct. Moreover, a similar problem exists with respect to plaintiffs' demand that Ford manually review the documents identified by its searches. While the Ford reviewers would constantly be making judgment calls about whether particular documents are or are not encompassed by plaintiffs' broadly worded requests, plaintiffs, who presumably understand what they are looking for, are in a far better position to review the documents identified as responsive.

While no method of document identification that could be applied to Ford's enormous, and still growing, document collection will be perfect, the approach adopted by Ford is not only consistent with the Court's Order, but is also far better than the paper depository with broad category index that plaintiffs accepted from Firestone and which is typically used in litigation of this type.

CONCLUSION

Plaintiffs' document requests are impermissibly broad, vague and ambiguous. Despite the impropriety and unintelligibility of many of plaintiffs' requests, Ford has made a good faith effort to respond to plaintiffs' requests. In accordance with this Court's Order, Ford has provided Bates numbers identifying responsive documents. In addition, Ford has provided drop down menus containing the documents responsive to each request, and it has created an system of searchable coded fields in its electronic database, which will allow plaintiffs to conduct their own searches of the database. Given that Ford has fully complied with this Court's Order, and with its obligations under Rule 34, plaintiffs' motion to compel responses to its document requests, and for sanctions, should be denied.

Dated: July 6, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

Service of the foregoing was made by placing a copy of the same into the United States Mail, first class postage prepaid, this _____ day of _____, 2001, addressed to all counsel of record appearing on the Panel Attorney Service List, and others, as necessary.

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